

REMARKS

In the Office Action dated April 28, 2003, claims 1-6, 8-11 and 13 stand rejected under 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 6,115,892 to Malin et al. (hereinafter "Malin") in view of U.S. Patent No. 5,647,671 to May (hereinafter "May") and U.S. Patent No. 6,212,857 to Van Erden reference (hereinafter "Van Erden"). Claim 7 stands rejected under 35 U.S.C. §103(a) as being obvious over Malin in view of May and Van Erden, and further in view of U.S. Patent No. 5,023,122 to Boeckmann (hereinafter "Boeckmann").

In view of the above, Applicants have amended claim 1 and 4, and added claims 14-15, which when considered with the remarks set forth below are deemed to place the application in condition for allowance. Support for the amendment of claim 1 of a tamper evident feature in the second flange is found in Fig. 3 and 6 of the application. Support for the amendment to claim 1 of the distal portion of the second flange being spaced on web from the first flange in the longitudinally moving direction of the web is found in Figs 4-6. Likewise, support for the amendment of claim 1 of a transporting the web in a longitudinally moving direction is also found in Figs. 4-6. Support for the amendment of claim 4 is found in Figs. 4-6. Finally, support for new claims 13 and 14 are found in figs. 4-6. No new matter is being added. Entry of the amendment and reconsideration of the application is respectfully requested.

Rejections under 35 U.S.C. §103(a)

Applicants respectfully submit that a prima facie cases of obviousness has not been set forth against claim 1, as amended, and therefore dependent claim 2-11 and 13-15. As set forth in Section 2142 of the Manual of Patent Examining Procedure (M.P.E.P.), a prima facie case of

obviousness requires three basic criteria to be met:

First, there must be some suggestion or motivation either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined), must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, and not on the applicants' disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991)(emphasis added).

Specifically, the combination of Malin, May and Van Erden does not teach or suggest the method of claim 1, as amended. Claim 1, as amended, first requires that the distal portion of the second flange when secured to the web be spaced from the first flange in the longitudinally moving direction of the web. However, May (the only cited reference teaching one flange longer than the other) does not provide any indication as to what orientation or direction the flanges are positioned on the web in relation to the movement of the web. Thus, Applicants do not see how May when combined with Malin (and much less with Van Erden) would teach or suggest that the distal portion of the second flange is spaced from first flange in the longitudinally moving direction of the web.

Second, the combination of Malin, May and Van Erden does not teach or suggest that the longer of the two flanges is atop the shorter flange as presently claimed. May does not provide any indication on whether the longer flange is atop the shorter flange or that the shorter flange is atop the longer flange as the web is moving to the form, fill and seal apparatus. Malin does not fill this void left by May since Malin shows flanges of equal length. Lastly, Van Erden is not

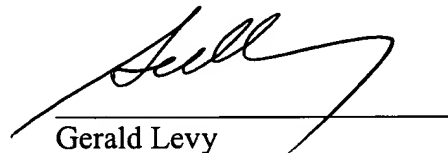
relevant since it is relied upon to show sliders. Thus, Applicants submit that the examiner contention of Malin in view May and Van Erden teaching or suggesting the longer flange being atop the shorter flange as presently claimed is an impermissible hindsight analysis.

Third, the combination of Malin, May and Van Erden does not specifically teach or suggest the requirement of claim 1 of the tamper evident feature being located in the second flange. While Malin does show a perforated line (32) in the top flange, this alone does not teach or suggest to one skilled in the art that a tamper evident feature should be introduced into the longer flange of May. Based on the teachings of Malin, one skilled in the art could easily incorporate the tamper evident feature into the shorter flange of May. Finally, Van Erden again is not relevant to this issue.

Thus, a prima facie case of obviousness has not been set forth and the above rejection should be withdrawn. Malin in view of May and Van Erden does not teach or suggest all the limitations of claim 1, as amended, as well as dependent claims 2-11 and 13-15.

If the Examiner has any questions regarding the amendment, the Examiner is respectfully requested to contact the undersigned attorney. Applicants do not believe that any fees are due with this amendment. However, if any fees are due, please charge such sums to our Deposit Account, 50-1145.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gerald Levy", is written over a horizontal line.

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